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*Attorneys for Plaintiff The Bank of New
York Mellon f/k/a The Bank of New York, as
Trustee for the holders of the Certificates,
First Horizon Mortgage Pass-Through
Certificates Series FHASI 2005-AR5*

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UNITED STATES DISTRICT COURT
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1 service contained in Rule 4(m) "operates not as an outer limit subject to reduction, but as an
2 irreducible allowance." *Henderson v. United States*, 517 U.S. 654, 661 (1996). "On its face, Rule
3 4(m) does not tie the hands of the district court after the 120-day period has expired. Rather, Rule 4(m)
4 explicitly permits a district court to grant an extension of time to serve the complaint after that 120-day
5 period." *Mann v. American Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003). Moreover, the Advisory
6 Committee Notes to Rule 4(m) state that the rule "explicitly provides that the court shall allow
7 additional time if there is good cause for the plaintiff's failure to effect service in the prescribed 120
8 days, and authorizes the court to relieve a plaintiff of the consequences of an application of [Rule
9 4(m)] even if there is no good cause shown." See Fed. R. Civ. P. 4(m), Advisory Committee Notes,
10 1993 Amendments.

11 Rule 4 provides for court discretion in its enforcement, providing that a court may "order that
12 service be made within a specified time," even if that time exceeds the recently amended 90-day time
13 frame for service. All Defendants have now been served, and most were served within the 120-day
14 time limit of former Rule 4. Plaintiff believes no prejudice has or will result from the delay in service.

15 For these reasons, Plaintiff respectfully requests the Court exercise its discretion and permit the
16 service now accomplished on defendants Premier One Holdings, Inc.; Yuanyuan Zhu; and Nevada
17 Association Services, Inc.

18 DATED March 29, 2017.

19 **AKERMAN LLP**

20 **IT IS ORDERED** that, as no response
21 has been filed, and the time for filing a
22 response has expired, the motion is
GRANTED.

23 Dated: April 26, 2017

24
25 
26 Peggy A. Leen
27 United States Magistrate Judge

28
29 */s/ Rex D. Garner*

30 MELANIE D.MORGAN, ESQ.
31 Nevada Bar No. 8215
32 REX D. GARNER, ESQ.
33 Nevada Bar No. 9401

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36
37 *Attorneys for Plaintiff The Bank of New York
38 Mellon f/k/a The Bank of New York, as Trustee for
39 the holders of the Certificates, First Horizon
40 Mortgage Pass-Through Certificates Series
41 FHASI 2005-AR5*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of March, 2017, service of the foregoing
RESPONSE TO COURT'S ORDER DATED FEBRUARY 28, 2017 [ECF NO. 17] AND
REQUEST FOR EXTENSION OF TIME FOR ACCOMPLISHED SERVICE was made
pursuant to FRCP 5(b) and electronically transmitted to the Clerk's Office using the CM/ECF system
for filing and transmittal to all interested parties.

/s/ Michael Hannon

An employee of AKERMAN LLP

AKERMAN LLP

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